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Legal Department

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Two questions are raised for the R.L.A.'s opinion :-

(1) Whether there is prima facie case for prosecuting Mr. Surendra Mehta for the contraventions of the Cotton Textiles (Control) Order punishable under section 9 of the Essential Supplies (Temporary Powers) Act, 1946 ; and

(2) What effect the power of attorney dated 13th March 1939 executed by Mr. Popatlal Harilal Nagari in favour of his son Mr. Bansidhar Popatlal Nagari has on this case.

2. The legal position regarding the liability of Director under section 9 of the Essential Supplies (Temporary Powers) Act, 1946, has been exhaustively discussed by the Remembrancer of Legal Affairs in his opinion No. 4722 dated 17th May 1948, a copy ofwhich is enclosed herewith for ready reference. It has, however been recognized that, although that may be the strict legal position, there should, as a rule, be some prima facie evidence connecting the Director concerned with the contravention, and that the case should not rest merely upon the artificial presumption created by section 9 of the Essential Supplies (Temporary Powers) Act.

3. It seems from the record that there is sufficient material to make out a strong prima facie case against Mr. Surendra Mehta. Messrs. Chimanlal & Govindlal & Co. Ltd. carried on business as Secretaries, Treasurers and Agents of the National Mix Mills Co. Ltd., and Mr. Popatlal Harilal Nagari was acting as the Managing Agent of the National Mills Co. Ltd. and doing all business on behalf of Messrs. Chimanlal and Govindlal & Co. Ltd. Mr. Surendra Mehta himself admits that Mr. Popatlal is his father-in-law, and at his instance he consented to be a Director of the National Mills Co. Ltd. It is true that Mr. Popatlal had executed a power of attorney in favour of his young son, who, at the time when the power of

of attorney was executed in the year 1939, was only 19 years of age. It is, therefore, difficult to say that Mr. Popatlal had directed himself of all control and management of the Mills in favour of an immature young man; and that gains support from the fact that it was Mr. Popatlal who invited Mr. Surendra Mehta to be a Director of the Mills. There is no substance in the plea of Mr. Surendra Mehta that at no time didhe take any active part either in the conduct or management of the business of the Mills, much less in the internal or day-to-day administration and working thereof, and that during the time he acted as Director, he attended one or two meetings of the Board of Directors at Ahmedabad. In the first place, Mr. Mehta admits that he arranged a loan to the tune or Rs. 5 lakhs for the Mills in the beginning of October 1948, i.e. in the very month in which the Police were investigating this cas,e which would show his immediate active connection with the management. It is safe to infer that no man of business would under ake the responsibility of negotiating such a big ø loan for a concern which was in straitened circumstances unless he had assumed responsibility for seeing that the concern was so run as to make a profit; and in fact that was the very object of inviting an experienced person like Mr. Mehta to serve as a Director. But the case rests on much stronger evidence supplied by the statement which the Manager of the Mills Mr. Somabhai Shah first made before the Police on 11th October 1948. The following is the relevant extract from that statement.

> The Director in charge ofactive duty is Mr. Surendra Maganlal of Bombay. He visits the Mills every week or ever y fortnight and takes part in all items of work and management. of the Mills, For the last two months he has been issuing instructions (directions) Mr. Bansidhar Sheth works according to the directions of Mr. Surendra Maganlal-at times by remaining present with him."

/ and the managment of the Mills is carried on only in accordance with his instructions (Directions) -

The very [illegible]ation "Director in charge of active duty" [illegible] sufficien. to show that position Mr. Purshotma[illegible] held in [illegible] of this Bill. That designation is consistent with the manner in which Mr. Mehta was invited to join his business, the idea being that he was to share responsibility and extricate the concern from its financial difficulties. It is true that Mr. Somabhai Shah got risen and tried to alter [illegible] his earlier statement by a supplementary statement dated 26th October 1940 in which he found it necessary to add a clause as to what he had said earlier was the meaning of the expression "Director in charge of active duty". But even then he had to admit that Mr. Purshotma Mehta used to come to office on and off and every now and then used to see the work and go away, which itself is sufficient to prove the active association of Mr. Mehta with the management. There is no reason to disbelieve the first statement made by Mr. Somabhai Shah; and his supplementary statement does not completely get rid of the effect pronounced thereby. It is necessary to add that Mr. Shah also said in the first statement that on the day i.e. on 11th October 1940, when that statement was being recorded Mr. Mehta was even present in the Mill, which again proves the falsity of Mr. Mehta's claim that it came as a surprise to him when he returned from Japan that an offence was registered etc. The nature of the contraventions must also be taken into account, the contraventions were as they follow :-

(1) They packed bales in October 1945 but put the September Tax-mark.

(2) They tempered with the godown books. In the daily bales packing register the management removed some pages of cloth bales packed on 1st October 1948 to 3rd October 1948 and inserted new pages, and showed all the cloth beles packed from 1st October 1948 to 3rd October 1948 as packed on 29th September 1948.

(3) They sold bales of subsequent packing even though they were not released by the Textile Commissioner

(4) They were found in the process ofpacking bales with certain dhaba numbers which were already given to packed bales and were found to be lying in their godowns.

These contraventions appear to be such that responsibility for them cannot be fixed, only upon the lower subordinates to the exclusion of the persons in charge of the management.

4. In short, having regard to Mr. Mehta's connection with Mr. Popatlal who was the Managing Agent of the Mill, to the fact that he was invited to be a Director apparently to help and manage the business when it was in difficulties, to his efforts in securing a loan, to the position, which, according to the Manager of the Mills, he occupied in the management of the Mills and to the nature of the contraventions, one can safely say that there is strong prima facie case for impleading Mr. Mehta as an accused and throwing upon him the burden of proving that the contraventions took place without his knowledge or that he exercised all due dilligence to prevent those contraventions.

5. The power of attorney about which something has been said in paragraph 3 above does not affect the case against

Mr. Mehta or the case in general. Section 9 of the Essentia Supplies (Temporary Powers) Act, 1946, applies to every Director, Manager, Secretary or other officer or agent of a Company and even on the assumption that the holder of the power of attorney Mr. Bansidhar Popatlal Nagari, is the son of Mr. Popatlal, was actually working as the Managing Agent, the responsibility of Mr. Surendra Mehta is not ther by mitigated in view of the circumstances already discussed. The object of the section is to hold the Director responsible in addition to the Manager or the Managing Agent, and as there is prima facie evidence to connect Mr. Mehta, who was the Director in charge of active duty, with the contraventions, the fact that the power of attorney was in favour of Mr. Bansidhar would not affect his liability.

Sd/- P.M.Lad
28-6

Remembrancer of Legal Affairs.

D.F. to I.T.C. No. 395-Confl, dated 29th June 1949.

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The legal position has been explained in the R.L.A.'s opinion No. 9568 dated the 11th October. 1948 from which it would appear that it would not be feasible to prohibit the sale of imported yarn in the Province, in-as-much as no such power is given to the Provincial Government, and it would also inevitably conflict with the powers of the Textile Commissioner under Clause 30 of the Cotton Textile ~~Commissioner~~ ~~Mix~~ (Control) Order 1948. Nor would it be feasible to prohibit the sales of such yarn under the powers delegated to the Provincial Textile Controller under the said clause 30. It is no doubt feasible to regulate the distribution of the ~~yrn~~ yarn by licenses but a prohibitory license fee cannot be levied. The fee must be commensurate with the purpose of the license (see Advocate General's Opinion No. 7 dated 13-4-49 and R.L.A.'s Opinion No. 3804 dated 8-4-49). Moreover, the wholesale refusal of licenses would be ultra-vires the power of regulating by licenses given under clause 3(2)(d) of the Essential Supplies (Temporary Powers) Act, 1946. Subject to these qualifications there will be no legal objection to regulating the movement of yarn district-wise. If that has the desired effect of ~~-~~ending the yarn outside the Province so much the better; otherwise, the best course would be for the Provincial Government to seek delegation of the powers given under sub-section (1) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 without reference to the clauses of sub-section (2) since the powers under sub-section (1) include the power of prohibiting the supply and distribution and trade and commerce in any essential commodity.

Sd/- P.M.Lad
4-8

Remembrancer of Legal Affairs.

U.R. to P.T.C. No. 500-Confl. dated the 5th August 1949.

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Attention is invited to R.L.A.'s opinion No. G/139 dated 12-2-49 copy enclosed for ready reference.

Looking to the history of this case and the position now occupied by him Mr. Shamaldas L. Gandhi may be well advised to appear before the Magistrate without waiting for the execution of the warrant and a letter of request may be addressed to him for that purpose through the Saurashtra Government.

Sd/- P.H.Lad
20-8-49

Remembrancer of Legal Affairs.

U.H. to P. & C.D. No. 535-Confl. dated 23rd August 1949.

S.C. 28/7

4 copies.

Office of the R.L.A.

Unless there is a fair chance of success for the prosecution, it is not desirable to harrass a Government servant by prosecuting him. In the present case, it appears that there is hardly any evidence to substantiate the charges against Messrs. T.F.Kulkarni and A.M.Patil under sections 175,201, 202 and 204 of the Indian Penal Code. The charge under section 175 appears to have been suggested by the District Government Pleader, Dharwar. To substantiate that charge the prosecution will have to prove that the accused were legally bound to produce or to deliver up documents to any public servant; and they intentionally omitted so to produce or to deliver up the same. It appears that here is no statutory provision whereunder the accused were legally boundto produce or deliver up the documents to the Mamlatdar, nor is there anything to prove that they intentionally omitted so to produce or to deliver up the same, for there was not point in their withholding or concealing thedocuments when admittedly they did produce the muddemal before the Mamlatdar. Consequently, the charge under section 175 would hardly be tenable.

2. To prove the charge under section 201 the prosecution will have to prove that the accused knew or had reason to believe that an offence was committed and caused the documents to disappear with the intention of screening the offender from legal punishment. As pointed out by the Provincial Textile Controller's office, it is doubtful whether the possession of 175 yards of cloth was an offence. If that did not constitute an offence, section 201 will have no application at all. Further, even assuming that the possession of 175 yards of cloth was an offence, and that the accused knew or had reason to believe that it was an offenc still it would be very difficult for the prosecution to prove that the accused secreted the documents of inquiry with

of muddemal before the Mamlatdar would negative any such intention.

3. To establish the charge under section 202 what is necessary is the intentional omission to give information of the offence by the person bound to inform. There cannot be any intentional omission to give the information of the offence that is obvious from the fact that the muddemal was produced before the Mamlatdar. There does not appear to be any evidence to prove destruction of documents by the accused ~~the~~ to prevent their production as evidence, for the accused were not in the least interested in the destruction of documents and there was no purpose in destroying the documents after producing the muddemal before the Mamlatdar. In the circumstance, it appears that there being no fair chance for the prosecution to succeed, Government may direct the Public Prosecutor, Dharwar, to withdraw the prosecution.

4. Even for a departmental inquiry there does not appear to be a very strong case. At any rate, there does not appear to be any case at all against Mr. A.M.PAtil for the inquiry was started by Mr. Kulkarni and Mr. A.M.Patil could not have any hand in the suppression of the documents If at all Government wants to hold any departmental inquiry, it may be held against Mr. Kulkarni, for he at least made inquiry in the case, recorded the evidence of certain witnesses and made a Panchnama in respect of the attachment of the property. It would be for him to explain the whereabouts of these papers. Although he may not be shown to have suppressed these documents, the fact that these documents are not now forthcoming, would justify Government in asking him to establish that he was not negligent in the discharge of his duties and the papers were not lost owing to his fault.

Sd/-P.M.Lad
21-11

Remembrancer of Legal Affairs.

U.R. to P.T.C. No. 718-Confl. dated the 21st November 1949.